

CONSTITUTIONAL LAW GUIDEBOOK

Chapter 11 – External Affairs

Problem Question (pg 185)

The International Conference on Environmental Protection is held at New York under the auspices of the United Nations. Papers presented by experts indicate that the problem of global warming has become far more grave than was originally thought. Despite this, participating countries are unable to agree on a timetable for reduction in carbon dioxide emissions. As a compromise, the Conference agrees to a set of recommendations drafted by a panel of scientists, setting targets for those countries willing to take steps to reduce emissions. The Recommendations set an emissions target for industry of a maximum of 30 parts per 1000 of carbon dioxide. On his return from the conference, the Minister for Foreign Affairs, Mr Upper, indicates that the Commonwealth Government will introduce legislation to deal with what, from Australia's perspective, is a serious problem.

As a consequence, Parliament enacts the *Greenhouse Gasses Emission Act 2008* (Cth), the key provision of which states as follows:

4 Prohibition of pollution

- (1) It shall be an offence to operate any industrial plant which produces more than 15 parts per 1000 of carbon dioxide.
- (2) The operator of industrial plant that produces more than 15 but less than 30 parts per 1000 of carbon dioxide will, on conviction, be subject to a penalty of 1000 penalty units.
- (3) The operator of industrial plant that produces more than 30 parts per 1000 of carbon dioxide will, on conviction, be subject to a penalty of 2000 penalty units.

You are approached for legal advice by Tom and Ruth, partners in Chernoble Technologies. Their firm owns a coal-fired blast furnace which produces 25 parts per 1000 of carbon dioxide. A prosecution has been lodged against them under s 4 of the Act.

How to answer this problem - issues to consider:

1. Is the nature of the international document relevant in determining whether this law is intra vires?
2. How does one determine whether a law purportedly enacted in order to implement an international obligation is constitutional? What test is used?
3. Based on the facts of this problem, are Tom and Ruth likely to be convicted?